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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 936

CLIFTON B. LAYTON,

Petitioner,

vs.

WILLIAM J. THAYNE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI.

The petition of Clifton B. Layton respectfully shows to the Court:

That on the 12th day of December, 1941, he filed his petition in the United States District Court for the District of Utah, praying for relief under section 75 of the Bankruptcy Act. Attached to the petition was Schedule "A" showing a mortgage on real estate located in Davis County, Utah, to Ruth E. Layton, for $4,222.80, a mortgage to Davis County Bank for $7,994.00, and a judgment for foreclosure of a third mortgage held by William J. Thayne, for $2,600.00, together with some obligations secured by chattel mortgages not herein involved. Also there was attached Schedule "B-1" showing land in Davis County, of the value of $8,000.00, and money in the hands of a receiver estimated at

$1,000.00. The petition was duly approved and referred to a conciliation commissioner. A meeting of creditors was had, a composition and extension proposal was made and rejected, after which the debtor filed an amended petition for relief under subsection (s) of section 75. William J. Thayne filed a petition praying that the real estate be stricken from the schedules and that a finding be made that Clifton B. Layton had no interest in the real estate. An order to show cause was issued, and upon hearing, the court made findings, drew conclusions of law and entered an order dismissing the proceeding.

The court found briefly stated that William J. Thayne, as assignee of a mortgage upon the land, instituted suit to foreclose the mortgage subject to a prior mortgage to the Davis County Bank; that a decree of foreclosure was entered, the property sold, a certificate of sale issued, and that, on the 2nd day of April, 1940, the sheriff of Davis County issued a sheriff's deed to William J. Thayne covering the land. The court also found:

> "3. On the 25th day of March, 1941, the Davis County Bank instituted suit to foreclose its mortgage given to secure payment of the sum of $5,000.00 making the debtor and William J. Thayne parties defendant and foreclosure was had, and the property was sold to the Davis County Bank and a certificate of sale issued on the 5th day of July, 1941. In said proceeding the said debtor, by the making and giving of a deficiency judgment against him for the sum of $180.46 and in favor of the Davis County Bank, became a judgment debtor. The said William J. Thayne failed to redeem the property from the foreclosure sale under the prior mortgage to the Davis County Bank, but entered into a contract for the purchase of the land from the Davis County Bank, if and when it secured title.
>
> 4. On the 27th day of March, 1941, the right of redemption from the sale, under the foreclosure of the

Thayne mortgage, having expired, the sheriff of Davis County, acting upon a writ issued in that case, removed the debtor and his family from the premises and on or about the 1st day of May, 1941, the said debtor went to the State of Idaho and joined his son who was operating a farm on a crop share basis and during all of his stay in Idaho, he did general farm work, such as irrigation, mowing, haying, cultivating and such things as were required to be done in the production of the products of the soil and he did nothing else. On or about the 14th day of July, 1941 he sold his interest in the crops being produced to his son for approximately $260 and returned to Utah and with his family resided with his mother in the locality of the land formerly owned and occupied by him. He immediately sought and secured empolyment caring for a garden on his mother's premises and in performing farm work, such as haying, feeding livestock, irrigating and etc., for his neighbors for wages on a per diem compensation.

5. Since 1936 said debtor has engaged in no business or work or labor except farm labor in the production of farm products. Between September 1936 and the date of the ejection of the debtor from the lands schedule herein he leased part of said land and farmed a garden and bought and sold livestock on commission. He received no income except from the lease of his farm and the produce from his garden and buying and selling livestock on commission.

6. On the 15th day of February, 1937, the said debtor executed and delivered a deed to the said premises to Lois C. Layton, his wife, subject to the mortgages hereinabove referred to and containing the following conditions: 'This instrument is subject to release by the Federal Court under pending Debtor Relief proceedings.' "

From the foregoing Findings of Fact the court drew the following:

Conclusions of Law.

"1. That upon the entry of judgment of foreclosure of the mortgage from the said debtor to the Davis County Bank, the said debtor became a judgment debtor and under the provisions of the Revised Statutes of Utah, 1933, Section 104-37-30, the debtor had a right of redemption in said property, which right was in full force and effect until the 5th day of January, 1942.

2. That said right of redemption was not extinguished by the deed of conveyance from the said debtor to his wife, Lois Layton and was not cut off or terminated by the sale of said property upon the foreclosure of the mortgage from said debtor to the said William J. Thayne. That any redemption made by the debtor after he became a judgment debtor under the foreclosure by the Davis County Bank would enure to the benefit of his wife, Lois Layton and he did not thereby acquire such a status as would permit him to initiate and maintain a proceeding under Section 75 of the Bankruptcy Act."

An appeal was taken from this order to the United States Circuit Court of Appeals for the Tenth Circuit, and on January 19, 1943, the court delievered an opinion reversing the District Court and holding that the right of redemption arising in favor of the debtor when he became a judgment debtor under the foreclosure of the first mortgage was sufficient to sustain the proceeding, and the court said:

"* * * But it does not follow that, because a distressed farmer has a right of redemption in a farm, he is entitled to the possession thereof, together with the income therefrom, in a farmer-debtor proceeding."

and further,

"Here appellant had parted with all interest in the farm by his deed to his wife. Her title to the farm had passed to appellee by sheriff's deed. Both he and his

wife had lost the possession of the farm. Admittedly, after he had conveyed this farm by deed and before he became a judgment debtor, he had no interest or claim, personal or otherwise, in or to the farm. The fact that his judgment creditor did not bid the full amount of his claim could not reinvest him with that which he had lost by his deed of conveyance and by eviction under process at the hands of the sheriff. If his status is that of a farmer and entitles him to the benefits of the Act, this personal privilege to redeem, which is not an interest in the farm itself, can be protected in this proceeding by an order staying the running of the period of redemption pending the administration of his estate, but it cannot give him a property right in the farm itself so as to entitle him to its possession or the fruits thereof during the pendency of the proceedings."

and further,

"Even though appellant is not entitled to the possession of this farm, he is nevertheless entitled to have his other property, including the personal right of redemption, administered and his obligations liquidated under the provisions of Subsection (a) of the Act." *Layton* v. *Thayne*, 133 F. (2d) 287.

There was no cross appeal taken by William J. Thayne, appellee. The debtor and his family had been removed from the property by a writ issued out of the District Court for Davis County, and in the proceedings for the foreclosure of the junior mortgage, and it was made to appear from the schedules and record that a receiver was in possession of the property and held approximately $1,000.00 in rentals at the time of the filing of the amended petition under subsection (s).

The following questions are presented by this petition:

1. The debtor, being a farmer and having property invoked the jurisdiction of the court under section 75 of the

Bankruptcy Act and by an amended petition for an adjudication under subsection (s), has the court the power to deny him the possession of his farm property in view of that part of section 75 (s) 4, which reads:

> "* * * If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this act."

2. No cross appeal having been taken by William J. Thayne, appellee, was it within the proper exercise of the power of the Circuit Court of Appeals to enter or direct the entry of a judgment not asked for by the appellee either in the district court or in the Circuit Court of Appeals.

3. Did William J. Thayne, through the foreclosure of his mortgage subject to the prior mortgage to the Davis County Bank, lose all interest in the property by failing to redeem from the sale under the foreclosure of the prior mortgage and thereby lose his right to appear in the district court or in the Circuit Court of Appeals.

4. Is it within the jurisdiction of the Circuit Court of Appeals or the district court to deny, limit or restrict the right of possession of a farmer debtor who invokes the relief provided under section 75 of the Bankruptcy Act?

The opinion of the Circuit Court of Appeals is reported in *Layton* v. *Thayne,* 133 F. (2d), 287.

A writ of certiorari should issue in this case because:

1. The opinion of the Circuit Court of Appeals is in direct conflict with the statute in this that the statute expressly provides that upon the filing of an amended petition, such receiver shall be divested of possession, and the property returned to the possession of the debtor under the provisions of the act.

2. Because the decision of the Circuit Court of Appeals is in direct conflict with

Minnie Reese Richardson Wragg v. *Federal Land Bank of New Orleans,* decided January 4, 1943, 87 L. Ed. 273.

3. Because there is a direct conflict between the decision of the Circuit Court of Appeals of the Eighth Circuit in

McLean v. *Federal Land Bank of Omaha,* 130 F. (2d)

Federal Land Bank of Louisville v. Morrison, 133 F. (2d) 613.

4. Because if the lower courts have the power to deny possession to a farmer, the whole proceeding is futile, as a farmer cannot conceivably rehabilitate himself if denied possession of his farm.

5. Because the Circuit Court of Appeals, in the absence of a cross appeal, has undertaken to grant affirmative relief to an appellee with the practical effect of leaving the farm vacant.

Respectfully submitted,

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Respondent.

SUPPORTING BRIEF.

This Court is given authority, by Section 24 of the Judicial Code, 28 U. S. C. A. 347, page 359, and by Section 24 (c) of the Bankruptcy Act to issue the writ in this case.

Every step prescribed by section 75 of the Bankruptcy Act has been resisted by creditors and technical constructions have been indulged by lower courts which, had they been sustained, would have destroyed effectually the statute as a relief measure for farmers. In this case, if the appellee, having lost his interest in the property by failing to redeem, had any right at all to appear in court still he did not ask for such a construction of the statute as the circuit court of appeals saw fit to make. Perhaps for the first time, a court has held that even though a farmer qualified under the act, properly invokes the jurisdiction of the court and

seeks to conform to the prescribed procedure, still he is not entitled to the possession of his farm. A denial of the possession is a denial of all rights under the statute for from a practical standpoint, a farmer, without a farm, cannot ordinarily redeem.

There is not a word in the recent decision of this Court in *Minnie Reese Richardson Wragg* v. *Federal Land Bank of New Orleans,* decided January 4, 1943, 87 L. Ed. 273

which would justify a denial of the right of possession of the petitioner in this case. Furthermore, by the express provisions of section 75 (s) 4

> "* * * such receiver shall be divested of possession and the property returned to the possession of such farmer, under the provisions of this Act."

By what process of reasoning can the court justify a judgment absolutely contradictory to the express terms of the statute? The court says:

> "* * * But it does not follow that, because a distressed farmer has a right of redemption in a farm, he is entitled to the possession thereof, together with the income therefrom, in a farmer-debtor proceeding."
>
> *Layton* v. *Thayne,* 133 F. (2d) 287.

In support of this conclusion, the court said:

> "* * * This, strictly speaking, is the 'right of redemption'. It is a mere personal privilege rather than an interest or estate in the land. It may be exercised only by those persons named in the statute."

In the *Wragg* case, the court said:

> "Respondent argues that under Alabama statutes and decisions the statutory right of redemption after foreclosure is defined as a 'personal privilege' rather than

as 'property or property rights' (Title 7, Sec. 743), and hence is not within the jurisdiction of the bankruptcy court in a farmer-debtor proceeding. But Section 75 prescribes its own criteria for determining what property interests may be brought within the jurisdiction of the court. In the interpretation and application of the Bankruptcy Act as in the case of other federal statutes, federal not local law applies. Prudence Realization Corp. *v.* Geist, 316 U. S. 89, 95, 86 L. Ed. 1293, 1298, 62 S. Ct. 978, and cases cited. It is for the bankruptcy court to determine, by reference to the provisions of the bankruptcy statute, what rights created by state law—regardless of the characterization which may be applied to them by state statutes and decisions—are within the jurisdiction of the bankruptcy court. United States *v.* Pelzer, 312 U. S. 399, 402, 403, 85 L. ed. 913, 915, 916, 61 S. Ct. 659." *Wragg* v. *Federal Land Bank of New Orleans,* 87 L. Ed., page 275.

We therefore turn to the statute itself to see what a petition under section 75 of the Bankruptcy Act brings to the Court for administration. We quote section 75 (n):

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

The right of the debtor as found by the district court and as approved by the circuit court of appeals is a right of

redemption. It was not sold upon the foreclosure of the Thayne mortgage because it did not then exist. It came into existence under the Utah Statute when the Davis County Bank foreclosed its mortgage, and through foreclosure proceedings, made the debtor a judgment debtor. It could not have been sold before it came into existence and yet when it did come into existence, it was a substantial property right. It was a right to reacquire the property by payment of the Davis County mortgage. Under section 75, the debtor had the right to go into the possession of the property and to retain possession for a period of three years provided he paid the rentals fixed by the court. It is a right which inheres in the farm property itself. In no sense is it a personal privilege alone. The right may be transferred, and the successor-in-interest may redeem. The Utah Statute so provides:

104-37-30, Utah Code Annotated, 1943.

The jurisdiction of the Court over this right is, by the statute, made exclusive and the prescribed procedure must be followed:

John Hancock Mut. L. Ins. Co. v. *Bartels,* 308 U. S. 180, 84 L. Ed. 180, 60 Sup. Ct. 221, 41 Am. Bankr. Rep. (N. S.) 296;

Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 370, 60 Sup. Ct. 343, 41 Am. Bankr. Rep. (N. S.) 501;

Wright v. *Logan,* 315 U. S. 139, 86 L. Ed. 745, 62 S. Ct. 508;

Wright v. *Union Central Life Insurance Co.,* 304 U. S. 502, 82 L. Ed. 1490, 58 S. Ct. 1025, 36 Am. Bankr. Rep. (N. S.) 950;

Wright v. *Union Central Life Insurance Co.,* 311 U. S. 273, 85 L. Ed. 184, 61 S. Ct. 196;

Mangus v. *Miller,* 87 L. Ed. 135, 63 S. Ct. 182.

Federal Land Bank of Louisville v. Morrison, 133 F. (2d) 613.

As we understand, *Wragg* v. *Federal Land Bank*, supra, this Court has simply reaffirmed the principle stated in the above cases. The Circuit Court of Appeals has departed from that principle. This Court said in the *Wragg* case:

> "But the dismissal of the original proceeding and denial of the application to reopen it were not bars to a new proceeding under Section 75 to secure whatever relief the act would afford with respect to petitioner's remaining interest in the mortgaged property. We find no intimation in the language and purposes of the Act that an unsuccessful earlier proceeding would preclude a new petition so long as the farmer retains an interest which could be administered in a proceeding under Section 75."

We understand this to mean that if the proceeding has proved abortive because of a dismissal before the interest of the farmer in the property is extinguished in the manner prescribed by the statute that he may again invoke the jurisdiction of the court. The former proceeding in this case was halted by a ruling of the circuit court of appeals to the effect that the failure to file an amended petition after the holding of this Court that the original subsection (s) was unconstitutional and the reenactment of the present constitutional provision operated as the dismissal of the proceeding. Even so, the rights of the debtor were not extinguished, and he comes within the clear ruling in the *Wragg* case.

It is interesting and helpful to speculate as to who is entitled to the possession of this property; not Thayne because his judgment had been satisfied of record; not the receiver, because the statute says upon the filing of the amended petition he shall be divested of possession, and not the Davis County Bank because its mortgage was only in process of foreclosure. No deed was issued entitling it to possession; not Lois Layton, because she acquired only

a right to redeem which right was lost when she failed to redeem. We have, then, a farm, but who is entitled to possession? If this decision stands, the benefits of the statute are certainly being frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act.

We go further: The decision states the law to be the contrary of the express words of the statute itself.

The writ should issue in this case.

Respectfully submitted,

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